Sprint PCS,[129] and Verizon, Nextel and T-Mobile have acknowledged that separating taxes and other government mandated fees from non-mandated line items is appropriate.[130] We seek comment on the merits of our tentative conclusion regarding placement on bills of government mandated charges in a section separate from all other charges.

c. Other Considerations

44. We seek further comment on the mechanics of placing government mandated fees and taxes in a section of a bill separate from all other charges, and we recognize that some of these specifics may depend largely on how we distinguish ultimately between government mandated and non-mandated charges. Should a bill only separate government mandated from non-mandated charges,[131] or should it require separation of categories of charges beyond merely government mandated and non-mandated? In addition, should the labeling of such categories of charges be subject to imperative national uniformity, and if so, what should these categories be called?

45. As for our proposal for standardized labeling of categories of charges, we seek comment on whether the First Amendment provides any legal impediment. We found in the *Truth-in-Billing Order* that so long as we do not mandate or limit specific language that carriers utilize in their descriptions of the charges, standardized labels would not violate the First Amendment.[132] As discussed above,[133] both as a matter of First Amendment law[134] and as a matter of policy,[135] our focus in this *Second Report and Order, Declaratory Ruling, and Second Further Notice* is to ensure that bills are not misleading, such that consumers can make informed decisions on carriers based on pricing and services, in furtherance of the pro-competitive goals of the 1996 Act. Do our labeling proposals address satisfactorily these legal and policy considerations? Are there any other potential legal impediments, such as interstate and intrastate jurisdictional issues, in light of the *Truth-in-Billing Order*'s foundation in sections 201(b) and 258 of the Act? What separate role, if any, should states have with respect to labeling and determining what labels and descriptions are misleading?[136] If we establish national rules, can we have states enforce

[129] *See, e.g.,* Verizon AVC at 14, para. 36.

[130] *See* Nextel/T-Mobile Dec. 13 *Ex Parte* at 6 (asserting that the CTIA Consumer Code already calls for separation of government mandated and non-mandated charges on bills); Letter from Kathryn A. Zachem, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket No. 04-208 and CC Docket No. 98-170, at 2 (filed Dec. 2, 2004) (Verizon Wireless Dec. 2 *Ex Parte*) (emphasizing efforts of Verizon Wireless and the wireless industry to address "commingling" of taxes and non-mandated fees, and misleading descriptions).

[131] *See, e.g.,* California PUC Comments at 2.

[132] *See Truth-in-Billing Order,* 14 FCC Rcd at 7530, para. 60.

[133] *See supra* para. 3.

[134] *See Truth-in-Billing Order,* 14 FCC Rcd at 7530-32, paras. 60-63.

[135] *See, e.g., id.* at 7498, para. 7 ("our [truth-in-billing] principles and guidelines will protect consumers from misleading and inaccurate billing practices").

[136] *See, e.g.,* Minnesota DOC Comments at 2: "The Commission should recognize that states are in some cases the appropriate venues in which to handle misleading surcharges and fees . . . [and] that states play an (continued….)

them?[137]

46. We additionally seek comment on what the pragmatic considerations are in assessing whether we should require standardized labeling of categories of charges. What would be the monetary costs of such a requirement? We encourage commenters to address this issue with utmost specificity, such as data on how many bills they generate per month, a description of what billing systems would have to be changed, and what the estimated costs of such changes would be for the number of bills they generate. We particularly seek comment on the nature of the economic impact of such a requirement on small entities, and whether the proposed requirement should be applied to them in any manner different from its application to entities that do not qualify as small entities.[138] We also welcome comment on a comparison of such costs with current costs of compliance with any state-specific billing category labeling requirements.

47. Finally, consistent with our emphasis here on ensuring that consumers' bills are not misleading and that carriers do not misleadingly invoke government requirement or sanction of certain line items, we seek comment on whether it is misleading for carriers to include expenses such as property taxes, regulatory compliance costs, and billing expenses in line items labeled such as "regulatory assessment fees" or "universal connectivity charge."[139] For instance, is it misleading to include billing expenses -- which at best are related tangentially to regulation – in a line item called "regulatory assessment fee"? Similarly, given that property taxes are not related to regulation under the Act of a telecommunications company's provision of services, is it misleading to include such taxes in a "regulatory assessment fee"? In addition, we seek comment on whether surcharges identified as "regulatory assessment fees" or "cost recovery charges" are sufficiently clear and specific enough to comply with the requirements of section 64.2401(b) of our rules.[140]

2. Combination of Federal Regulatory Charges in Line Items

48. In the *Truth-in-Billing Further Notice,* the Commission sought comment on how carriers should identify line items that combine two or more federal regulatory charges into a single charge.[141] However, in the *Truth-in-Billing Order*, the Commission also expressed concern that where regulatory-related charges are not broken down into line items, it facilitates carriers' ability to bury costs in lump

(Continued from previous page)
important role in enforcing consumer protections." The Minnesota DOC acknowledges that state jurisdiction over interexchange and wireless carriers "is limited concerning the practices complained of in the NASUCA petition," and urges the Commission to step in and prohibit misleading charges. *Id.* at 3. Nevertheless, the Minnesota DOC expresses that any Commission decision on the NASUCA Petition would apply only to interstate service, and would merely "assist states" in evaluating intrastate charges. *Id.* at 4.

137 *See also infra* paras. 51 and 57.

138 *See infra* Appendices B and C for a discussion of what constitutes a "small entity."

139 *See supra* n.32.

140 *See, e.g.*, NASUCA Petition at 10-23, noting other examples of surcharges identified as "regulatory charge," "regulatory programs fee," "regulatory cost recovery fee," and "telecom connectivity fee."

141 *See Truth-in-Billing Further Notice,* 14 FCC Rcd at 7537, para. 71.

figures.[142] In light of these conflicting considerations, as well as the record developed in response to the NASUCA Petition,[143] we now refine our proposal to seek comment on whether it is unreasonable under section 201(b) of the Act for line items to combine federal regulatory charges.[144]

3. Preemption of Inconsistent State Regulation

49. As we have found in the *Declaratory Ruling,* state regulations requiring or prohibiting line items for CMRS bills are preempted rate regulation pursuant to section 332(c)(3)(A) of the Act.[145] Nevertheless, in the *Truth-in-Billing Order,* we allowed that "states will be free to continue to enact and enforce additional regulation consistent with the general guidelines and principles set forth in this Order, including rules that are more specific than the general guidelines we adopt today."[146] Primarily in *ex parte* submissions,[147] wireless carriers have argued that there are other bases for the Commission to preempt state regulation of carriers' billing practices, and that a change in course from our pronouncement in the *Truth-in-Billing Order* regarding states' roles in regulating carriers' billing practices is necessary to stem an onslaught of state regulation that is making nationwide service more expensive for carriers to provide and raising the cost of service to consumers.[148] Moreover, these bases are necessary if we are to preempt state regulation of the billing practices of other carriers, such as IXCs, because section 332 of the Act does not apply to such wireline carriers.

50. We tentatively conclude that one or more of the theories discussed below provide additional support for our preemption of state billing practices regulations that are inconsistent with our truth-in-billing rules, guidelines, and principles. As we discuss herein, there are clearly discernible federal objectives that may be undermined by states' "non-rate" regulation of CMRS carriers' billing practices. Thus, Verizon Wireless, and Nextel and T-Mobile, argue that the Commission should preempt state regulation that conflicts with the Commission's pro-competitive federal scheme for truth-in-billing

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[142] *See Truth-in-Billing Order,* 14 FCC Rcd at 7526, para. 55.

[143] *See, e.g.,* Global Crossing Comments at 2; MCI Comments at 5; RCA Comments at 8; NASUCA Reply at 16-21; SBC Reply at 4.

[144] Our proposal is limited to federal regulatory charges, and not state-specific ones, due to the limitations of our jurisdiction over labels involving exclusively intrastate services, pursuant to section 201(b) of the Act. *See Truth-in-Billing Order,* 14 FCC Rcd at 7503-04, 7522, paras. 21, 49. Any commenter who still believes that carriers should be able to combine two or more of these charges into a single charge is welcome to refresh the record on how carriers should identify such line items. *See Truth-in-Billing Further Notice,* 14 FCC Rcd at 7537, para. 71.

[145] *See supra* Section IV.B.3.

[146] *Truth-in-Billing Order,* 14 FCC Rcd at 7507, para. 26.

[147] *But see also* Leap Comments at 16-18; Nextel Comments at 35-47.

[148] *See* Nextel/T-Mobile Dec. 13 *Ex Parte* and Verizon Wireless Jan. 25 *Ex Parte* at 3-11 (citing, *e.g.,* a Minnesota statute, regulatory actions in Colorado and Indiana, and proposed regulatory actions in New Mexico and Vermont). *See also* NASUCA Petition at 65 n.170, citing a Georgia statute that NASUCA describes as prohibiting recovery of carrier contributions to the state universal service fund through separate surcharges.

regulation under the Act.[149] We seek comment on whether we should preempt under the Act state regulation of CMRS carriers' billing practices, beyond the 'line item' regulations that we recognize in the *Declaratory Ruling* above. In addition, to what degree can such "conflict preemption" be applied to *all* carriers under the provisions of the Act and other policy frameworks? Verizon Wireless, and Nextel and T-Mobile, also suggest that requiring wireless carriers to satisfy 50 different states' sets of rules relating to consumer disclosures and the details on bills would stifle the further development of wireless competition and unreasonably burden interstate commerce, in contravention of the U.S. Constitution's Commerce Clause.[150] Furthermore, Leap asserts that sections 201(b) and 205(a) of the Act give the Commission "express preemptive authority over state regulatory agencies with respect to prescribing billing format and content, including line-item charges."[151] We also seek comment on the merits of these other potential bases for Commission preemption of state regulation of carriers' billing practices.

51. In light of our tentative conclusion that other bases exist for the Commission to preempt state regulation of carriers' billing practices, we tentatively conclude that we should reverse our prior pronouncement that states may enact and enforce more specific truth-in-billing rules than ours. We solicit comment on this further tentative conclusion. In addition, we seek comment on, if we do adopt this further tentative conclusion, whether we should limit the scope of what constitutes "consistent truth-in-billing requirements by the states" under 47 C.F.R. § 64.2400(c), eliminate section 64.2400(c) from our rules altogether, or adopt an enforcement regime where states are permitted to enforce rules developed by the Commission.[152]

52. We believe that limiting state regulation of CMRS and other interstate carriers' billing practices, in favor of a uniform, nationwide, federal regime, will eliminate the inconsistent state regulation that is spreading across the country, making nationwide service more expensive for carriers to provide and raising the cost of service to consumers. Accordingly, we ask commenters to address the

[149] *See* Nextel/T-Mobile Dec. 13 *Ex Parte* at 2, 12-14, 16 (citing *City of New York*, 486 U.S. at 69, in which the Supreme Court asserted the "Commission's own power to pre-empt"); Verizon Wireless Jan. 25 *Ex Parte* at 5-7, 10-11, 14.

[150] *See* Nextel/T-Mobile Dec. 13 *Ex Parte* at 15; Verizon Wireless Jan. 25 *Ex Parte* at 4.

[151] Leap Comments at 17 (citing 47 U.S.C. §§ 201(b), 205(a)). Section 205(a) provides in relevant part that "the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable charge . . . and what classification, regulation, or practice is or will be just, fair, and reasonable. . . ." Leap adds that whether carriers can include separate line items associated with regulatory action on their bills is a "practice, classification, or regulation" under the Commission's express authority. *See* Leap Comments at 17.

[152] *See, e.g.*, 47 C.F.R. § 64.1110. In this example, our rules against "slamming," which is an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service, provide that state commissions may elect to administer our slamming rules. In adopting these rules, however, the Commission recognized that not all states have the resources to resolve slamming complaints, or may not choose to take on such primary responsibility for administering them, so the Commission also adopted rules allowing consumers in those states to file slamming complaints with the Commission. *See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes to Consumers Long Distance Carriers*, CC Docket No. 94-129, Corrected Version First Order on Reconsideration, 15 FCC Rcd 8158, 8169-80, paras. 22-43 (2000).

proper boundaries of "other terms and conditions" under section 332(c)(3)(A) of the Act,[153] and generally to delineate what they believe should be the relative roles of the Commission and the states in defining carriers' proper billing practices. Nextel and T-Mobile, for instance, argue that we should provide that any rules we propose governing line item charges are intended to "occupy the field and preclude additional state regulation," whether such regulation constitutes "rate and entry" regulation or regulation of "other terms and conditions" relating to line item charges.[154] They add that the CTIA Consumer Code should be adequate to occupy the field.[155] We seek comment on whether the other items of the CTIA Consumer Code not already addressed in this *Second Further Notice*[156] are enough to occupy the field, to the extent we occupy it.

53. In the alternative, Nextel and T-Mobile contend that in adopting section 332(c)(3)(A) of the Act, "Congress did not *preserve* state authority over 'other terms and conditions' of wireless service, but merely made clear that by preempting rate and entry regulation it was not prohibiting state regulation of other matters."[157] Thus, they maintain, the Commission should interpret the phrase "other terms and conditions" narrowly. They rely on the Commission's decision in the *Southwestern Bell Order,* citing it for the proposition that states may not prescribe the rate elements for CMRS, and thus may properly enforce only state contractual or consumer fraud laws of neutral application.[158] On the other hand, NASUCA argues that "other terms and conditions" under section 332(c)(3)(A) includes state regulation of billing and advertising practices, which "is not a regulation of the carriers' charges".[159] In accord with our precedents, we tentatively conclude that the line between the Commission's jurisdiction and states'

[153] The House Report stated that "other terms and conditions" under section 332(c)(3)(A) include "such matters as customer billing information and practices and billing disputes and other consumer protection matters . . . or such other matters as fall within a state's lawful authority," H.R. Rep. No. 111, 103d Cong., 1st Sess., at 261, and the Commission previously has recognized that under the "other terms and conditions" clause, states have a "legitimate interest . . . to regulate matters concerning aspects of consumer protection involved, *e.g.*, in customer billing practices." *Calling Party Pays NPRM,* 14 FCC Rcd at 10881, para. 37.

[154] Nextel/T-Mobile Dec. 13 *Ex Parte* at 11. *See also id.* at 12; Verizon Wireless Jan. 25 *Ex Parte* at 14 (asserting that the Commission should declare that section 332(c)(3)(A) and 47 C.F.R. § 64.2400(c) "bar all state regulation of CMRS billing line items, as well as billing regulations that are inconsistent with the Commission's rules").

[155] *See* Nextel/T-Mobile Dec. 13 *Ex Parte* at 2, 6-7 (citing *Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia,* 19 FCC Rcd 1563 (2004) for the proposition that the Commission should wait and see whether regulation is warranted in light of industry's voluntary steps to improve service).

[156] *See supra* paras. 39-44 regarding separation of mandated charges from carrier charges.

[157] Nextel/T-Mobile Dec. 13 *Ex Parte* at 2 (emphasis in original). *See also id.* at 12; Verizon Wireless Jan. 25 *Ex Parte* at 3 n.10.

[158] Nextel/T-Mobile Dec. 13 *Ex Parte* at 5-6 (citing *Southwestern Bell Order,* 14 FCC Rcd at 19903, 19907, paras. 10, 20). They also cite the *Wireless Consumers Alliance Order,* 15 FCC Rcd at 17034, para. 24, in which the Commission upheld the application to the wireless industry of state laws of general applicability barring misrepresentation and breach of contract.

[159] NASUCA Reply at 14-15, 56-57.

jurisdiction over carriers' billing practices is properly drawn to where states only may enforce their own generally applicable contractual and consumer protection laws, albeit as they apply to carriers' billing practices. We emphasize that our tentative conclusion does not limit a state's ability to assess taxes or create, for example, a state-specific universal service fund to which carriers must contribute. Furthermore, we believe that states' enforcement of their own generally applicable contractual and consumer protection laws – to the extent such laws do not require or prohibit the use of line items – would not constitute rate regulation under section 332(c)(3)(A).[160] However, states would be preempted from enacting and enforcing specific truth-in-billing rules beyond the rules, guidelines, and principles that the Commission has adopted, and that we may adopt in an order responsive to this *Second Further Notice*. We seek comment on these tentative conclusions.

54. We also solicit comment on the practical reach of the line that we tentatively delineate between the Commission's jurisdiction and states' jurisdiction over carriers' billing practices. For instance, Verizon Wireless cites New Mexico regulations that Verizon Wireless claims effectively bar carriers from including non-communications services on bills.[161] It also cites a California regulation that permits carriers to include non-communications services on bills, but requires them to place charges for such services in one or more separate sections of the telephone bill clearly labeled "Non-communications-related charges."[162] Pursuant to the jurisdictional line that we delineate, do such protections against "cramming"[163] properly fall within the Commission's jurisdiction, or within states' jurisdiction? Finally, we ask that commenters address what affect our tentative delineation between the Commission's jurisdiction and states' jurisdiction over carriers' billing practices would have on competition, both intermodal and intramodal.

4. Point of Sale Disclosure

55. The settlement agreements between Attorneys General from 32 states and Verizon Wireless, Cingular Wireless, and Sprint PCS contain numerous provisions obligating the carriers to disclose material rates and terms of service at the point of sale, whether that is at the carrier's retail location, via the carrier's website, or during a telephone conversation between the carrier and a consumer.[164] Furthermore, we note that some carriers independently have expressed support for point of sale

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[160] *See supra* Section IV.B.3.

[161] *See* Verizon Wireless Jan. 25 *Ex Parte* at 7 (citing N.M. Admin. Code tit. 17, §§ 13.7.6.2 and 13.9.3).

[162] *See* Verizon Wireless Jan. 25 *Ex Parte* at 7 (citing California PUC Rule Part 4, H(2) of General Order No. 168). Though the California PUC has stayed its order establishing consumer protection rules governing telephone and wireless marketing and sales practices, it stated that "[i]n no way" does the stay impact the PUC's enforcement of the existing interim rules governing billing for non-communications-related charges, of which the substance of Rule Part 4, H(2) is part. *See Order Instituting Rulemaking on the Commission's Own Motion to Establish Consumer Rights and Consumer Protection Rules Applicable to All Telecommunications Utilities*, Order Modifying Decision 04-05-057, California PUC Decision 05-01-058, at 4 (rel. Jan. 27, 2005).

[163] Cramming is the submission or inclusion of unauthorized, misleading, or deceptive charges for products or services on subscribers' telephone bills.

[164] *See, e.g.*, Verizon AVC at 5-9, paras. 17-23.

disclosure rules.[165] In accord with these agreements, and in order to ensure that these obligations apply nationwide to all carriers, we tentatively conclude that carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale. For instance, providing only a wide range of potential surcharges at the point of sale could be misleading.[166] In this regard, would actual government mandated surcharges in excess of 25 percent greater than estimated government mandated surcharges be misleading? Would it be misleading if such actual surcharges were in excess of 10 percent greater than such estimated surcharges?

56. We further tentatively conclude that such disclosure at the point of sale must occur *before* the customer signs any contract for the carrier's services. We believe that a disclosure after contract signing, when most CMRS carriers lock customers into long-term contracts subject to significant early termination fees, may thwart our pro-competition goal of enabling consumers to make informed comparisons of different carriers' plans before subscribing.[167] We seek comment on our tentative conclusions regarding point of sale disclosures. We also seek comment on whether the aforementioned provisions of the settlement agreements between Attorneys General from 32 states and Verizon Wireless, Cingular Wireless, and Sprint PCS establish an appropriate framework for any point of sale disclosure rules that we may adopt; and, if not, how the terms of the settlement agreements should be amended, or why we should refrain from codifying these provisions in the first place. We particularly seek comment on the effect of these tentative conclusions on small entities, and on whether it would be appropriate to apply whatever provisions we adopt to small entities in the same manner that we apply them to entities that do not qualify as small.[168]

57. Finally, we solicit comment on whether we should adopt an enforcement regime where states are permitted to enforce rules developed by the Commission regarding point of sale disclosures. For example, our rules against slamming provide that state commissions may elect to administer our slamming rules. In adopting these rules, however, the Commission recognized that not all states have the resources to resolve slamming complaints, or may not choose to take on such primary responsibility for administering them, so the Commission also adopted rules allowing consumers in those states to file slamming complaints with the Commission.[169] In this regard, we ask whether our slamming rules provide

[165] *See, e.g.*, Verizon Wireless Dec. 2 *Ex Parte* at 2

[166] *See, e.g.*, NJ Comments at 3 (stating that additional charges can increase consumers' bills by nearly 50 percent over the advertised rate); OPCDC Comments at 9-10 (maintaining that in many instances, consumers must pay 20 to 30 percent more than originally quoted by a carrier's customer service representative); and TracFone Reply Comments at 6 (contending that the average wireless consumer spends $17.75 per month above the advertised price of the monthly plan; "Most of these additional amounts are attributable to line items on carrier bills – charges not explained to the customers prior to signing service agreements"). We seek comment on what constitutes a reasonable estimate of government mandated surcharges at the point of sale.

[167] We also believe that disclosure prior to contract signing is consistent with the terms of the settlement agreements, which provide that "Carrier shall *during a Sales Transaction* . . . disclose clearly and conspicuously to Consumers all material terms and conditions of the offer *to be purchased*." Verizon AVC at 5, para. 17 (emphasis added).

[168] *See infra* Appendices B and C for a discussion of what constitutes a "small entity."

[169] *See supra* n.152.

a good model for rules that we may develop for point of sale disclosures. If we adopt an enforcement regime akin to that in our slamming rules, should we also establish rules prescribing specific penalty amounts and procedures for point of sale disclosure violations, like the penalty provisions in our slamming rules?[170] We encourage commenters to address how states can administer the process of any penalty scheme that we establish.

VI. PROCEDURAL ISSUES

A. Ex Parte Presentations for Second Further Notice of Proposed Rulemaking

58. This proceeding shall be treated as a "permit but disclose" proceeding in accordance with the Commission's *ex parte* rules, 47 C.F.R. § 1.1200 *et seq*. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

B. Paperwork Reduction Act

59. The *Second Report and Order* contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding.

60. In this present document, we conclude that CMRS carriers should no longer be exempt from 47 C.F.R. § 64.2401(b) – requiring that billing descriptions be brief, clear, non-misleading and in plain language. To the extent that any CMRS carrier is not currently in compliance with this requirement, certain modifications to the carrier's billing practices may be required.

61. In addition, the *Second Further Notice of Proposed Rulemaking* contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements proposed in this *Second Further Notice*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due 60 days after the date of publication of this *Second Further Notice* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

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[170] *See, e.g.*, 47 C.F.R. §§ 64.1140-70.

C. Congressional Review Act

62. The Commission will send a copy of this *Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

D. Filing of Comments and Reply Comments

63. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments in this proceeding on or before the **30th** day after publication of this *Second Further Notice of Proposed Rulemaking* in the Federal Register, and reply comments may be filed on or before the **60th** day after publication of this *Second Further Notice of Proposed Rulemaking* in the Federal Register. When filing comments, please reference CC Docket No. 98-170 and CG Docket No. 04-208. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 Fed. Reg. 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number(s). Parties also may submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

64. Parties who choose to file by paper must send an original and four (4) copies of each filing. Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-B204, Washington, DC 20554.

65. The full text of this document and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554, (202) 418-0270. This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their web site: www.bcpiweb.com or by calling 1-800-378-3160.

E. Accessible Formats

66. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *Second Report and Order,*

Declaratory Ruling, and Second Further Notice of Proposed Rulemaking also can be downloaded in Word and Portable Document Format (PDF) at http://www.fcc.gov/cgb/policy.

F. Regulatory Flexibility Analysis

67. Pursuant to the Regulatory Flexibility Act of 1980, as amended,[171] the Commission's Final Regulatory Flexibility Analysis regarding the *Second Report and Order* is attached as Appendix B.

G. Initial Regulatory Flexibility Analysis

68. Pursuant to the Regulatory Flexibility Act of 1980, as amended,[172] the Commission's Initial Regulatory Flexibility Analysis regarding the *Second Further Notice of Proposed Rulemaking* is attached as Appendix C.

VII. ORDERING CLAUSES

69. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201, 202, 206-208, 258, 303(r), and 332 of the Communications Act of 1934, as amended; 47 U.S.C. §§ 151-154, 201, 202, 206-208, 258, 303(r), and 332; section 601(c) of the Telecommunications Act of 1996; and sections 1.421, 64.2400 and 64.2401 of the Commission's Rules, 47 C.F.R. §§ 1.421, 64.2400, and 64.2401, the SECOND REPORT AND ORDER, DECLARATORY RULING, AND SECOND FURTHER NOTICE OF PROPOSED RULEMAKING ARE ADOPTED, and Part 64 of the Commission's rules, 47 C.F.R. § 64.2400, IS AMENDED as set forth in Appendix A.

70. IT IS FURTHER ORDERED that the rules and requirements contained in this *Second Report and Order* and in Appendix A attached hereto SHALL BECOME EFFECTIVE within 90 days of their publication in the Federal Register.

71. IT IS FURTHER ORDERED that the Petition for Declaratory Ruling filed by the National Association of State Utility Consumer Advocates on March 30, 2004, IS DENIED to the extent provided herein.

72. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, including the Final and Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

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[171] 5 U.S.C. §§ 601 *et seq.*

[172] 5 U.S.C. §§ 601 *et seq.*

APPENDIX A

Rule Change

Part 64 of the Code of Federal Regulations is amended as follows:

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

* * * * *

Subpart Y – Truth-in-Billing Requirements for Common Carriers

2. Section 64.2400(b) is revised to read as follows:

§ 64.2400 Purpose and scope.

(a) * * *

(b) These rules shall apply to all telecommunications common carriers, except that §§64.2401(a)(2) and 64.2401(c) shall not apply to providers of Commercial Mobile Radio Service as defined in §20.9 of this chapter, or to other providers of mobile service as defined in §20.7 of this chapter, unless the Commission determines otherwise in a further rulemaking.

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APPENDIX B

SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[173] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Further Notice of Proposed Rulemaking released by the Federal Communications Commission (Commission) on May 11, 1999.[174] The Commission sought written public comments on the proposals contained in the *FNPRM*, including comments on the IRFA. Comments filed in this proceeding specifically identified as comments addressing the IRFA and comments that address the impact of the proposed rules and policies on small entities are discussed below. The 1999 *Truth-in-Billing Order and Further Notice* included a Final Regulatory Flexibility Analysis (FRFA) that conformed to the RFA.[175] This present supplemental FRFA addresses only the modification to section 64.2400(b) of our rules adopted in this Second Report and Order, and conforms to the RFA.[176]

A. Need for, and Objectives of, the Order

2. In a 1999 Further Notice of Proposed Rulemaking, the Commission sought comment on whether the truth-in-billing rules adopted in the wireline context should apply to CMRS carriers in order to protect consumers.[177] In the 1999 *Truth-in-Billing Order*, the Commission concluded that the broad principles adopted to promote truth-in-billing should apply to all telecommunications carriers, both wireline and wireless.[178] The Commission noted that these principles represent fundamental statements of fair and reasonable practices. In the wireline context, the Commission incorporated these principles and guidelines into rules for enforcement purposes "after considering an extensive record of both the nature and volume of customer complaints, as well as substantial information about wireline billing practices."[179]

3. In the wireless context, however, the Commission found that the record at that time did not reflect the same high volume of customer complaints nor did the record indicate that CMRS billing practices failed to provide consumers with the clear and non-misleading information they need to make

[173] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[174] *See Truth-in-Billing and Billing Format,* CC Docket No.98-170, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd at 7550-52 at paras. 105-111.

[175] *Truth-in-Billing Order*, 14 FCC Rcd at 7537-7550, paras. 72-103.

[176] *See* 5 U.S.C. § 604. The requirements of the RFA do not extend to the issues set forth in the Declaratory Ruling. Thus, we do not address those issues herein.

[177] *Truth-in-Billing Order*, 14 FCC Rcd at 7535-36, paras. 68-70.

[178] *Truth-in-Billing Order*, 14 FCC Rcd at 7501, para. 13 ("[l]ike wireline carriers, wireless carriers also should be fair, clear, and truthful in their billing practices.").

[179] *Truth-in-Billing Order*, 14 FCC Rcd at 7501, para. 15.

informed choices.[180] The Commission therefore exempted CMRS carriers from the truth-in-billing rule that requires charges contained on telephone bills to be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered.[181] We believe that making the requirements of 47 C.F.R. § 64.2401(b) mandatory for CMRS will help to ensure that wireless consumers receive the information that they require to make informed decisions in a competitive marketplace.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA.

4. The Office of Advocacy filed comments specifically addressing the proposed rules and policies presented in the 1999 *Truth-in Billing Order* FRFA and IRFA.[182] In general, the Office of Advocacy argued that the Commission's FRFA and IRFA's were flawed due to vagueness. As the Commission has previously stated, however, we believe the *Truth-in-Billing Order* and regulatory flexibility analysis contained therein appropriately considered and balanced the concerns of carriers that detailed rules may increase costs against our goal of protecting consumers from fraud.[183] Moreover, we note that the scope of this Second Report and Order is significantly more limited than the 1999 *Truth-in-Billing Order* and the issues that Office of Advocacy addressed in its comments. The majority of commenters addressing the limited issue presented in the Second Report and Order, representing primarily CMRS providers, responded that the lack of billing complaints against wireless providers along with the competitive nature of the wireless industry should indicate that it is not necessary to apply these rules to CMRS.[184] Several state commissions, consumer organizations, and individual commenters, however, argued that many consumers were confused by their telephone bills including charges included on their CMRS bills.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[185] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[186] In addition, the term "small business" has the same meaning as

[180] *Truth-in-Billing Order*, 14 FCC Rcd at 7502, para. 16. The Commission also noted that notwithstanding the decision not to apply these guidelines to CMRS providers, that such providers remain subject to the reasonableness and nondiscrimination requirements of sections 201 and 202, "and our decision here in no way diminishes such obligations as they may relate to billing practices of CMRS carriers." *See Truth-in-Billing Order*, 14 FCC Rcd at 7502, para. 19.

[181] *See* 47 C.F.R. §§ 64.2400(b), 64.2401(b).

[182] *See, e.g.* Office of Advocacy, U.S. Small Business Administration 1999 Reply Comments;

[183] *Truth-in-Billing Order on Reconsideration*, 15 FCC Rcd at 6031, para. 20.

[184] *See, e.g.*, Bell Atlantic Mobile 1999 Comments at 3; CTIA 1999 Comments at 5; PCIA 1999 Comments 4-5;

[185] 5 U.S.C. § 604(a)(3).

[186] 5 U.S.C. § 601(6)

the term "small business concern" under the Small Business Act.[187] Under the Small Business Act, a "small business concern" is one that: 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) satisfies any additional criteria established by the Small Business Administration (SBA).[188]

6. **Wireless Service Providers.** The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"[189] and "Cellular and Other Wireless Telecommunications."[190] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[191] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[192] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[193] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[194] Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.

7. In this present document, we conclude that CMRS carriers should no longer be exempt from

[187] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comments, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[188] 15 U.S.C. § 632.

[189] 13 C.F.R. § 121.201, NAICS code 517211.

[190] 13 C.F.R. § 121.201, NAICS code 517212.

[191] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

[192] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

[193] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[194] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

47 C.F.R. § 64.2401(b) – requiring that billing descriptions be brief, clear, non-misleading and in plain language. To the extent that any CMRS carrier is not currently in compliance with this requirement, certain modifications to the carriers' billing practices would be required. Such modifications would include reviewing existing bills and making changes as necessary to ensure that any billing descriptions are clear, non-misleading, and in plain language as required by section 64.2401(b) of our rules.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

8. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

9. We have considered several alternatives to our decision to remove the exemption for CMRS carriers from 47 C.F.R. § 64.2400(b) including retaining that exemption or forbearing from that requirement under section 10 of the Act. Section 64.2401(b) requires that billing descriptions be brief, clear, non-misleading and in plain language. Although the Commission decided in 1999 to exempt CMRS carriers from the requirements of section 64.2401(b), the Commission nevertheless stated that the underlying principle (*i.e.* bills must be clear and non-misleading) should apply to wireless carriers and sought further comment on whether such requirement should be made mandatory to CMRS in the future. In addition, the Commission concluded that sections 201(b) and 202 would continue to apply to wireless billing practices.

10. The record in this proceeding, including comments of several states and individual consumers and the Commission's own complaint data, leads us to conclude that many wireless consumers are confused by the billing practices of their CMRS provider. As a result, we have decided to require CMRS providers to comply with our requirement that billing practices be clear, brief, and non-misleading. Many CMRS providers have indicated in this proceeding that they already comply with this requirement. As noted above, the identical underlying truth-in-billing principle and sections 201 and 202 have always applied to CMRS providers. Thus, we believe that the burden on CMRS carriers in complying with this requirement will be negligible.

11. **REPORT TO CONGRESS:** The Commission will send a copy of the Second Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[195] In addition, the Commission will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Second Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.[196]

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[195] *See* 5 U.S.C. § 801(a)(1)(A).

[196] *See* 5 U.S.C. § 604(b).

APPENDIX C

INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[197] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Second Further Notice of Proposed Rulemaking (*Second Further Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further Notice* provided above in section VI(D). The Commission will send a copy of the *Second Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. § 603(a). In addition, this *Second Further Notice* and the IRFA (or summaries thereof) will be published in the Federal Register.

A. Need for, and Objectives of, the Proposed Rules

2. The Commission determined that significant consumer concerns with the billing practices of wireless and other interstate providers raised in this proceeding, and outstanding issues from the 1999 *Truth-in-Billing Order and Further Notice*, necessitate that we clarify certain aspects of our existing rules and policies affecting billing for telephone service. Consumer confusion over telephone bills inhibits the ability of consumers to compare carriers' service offerings, thus undermining the proper functioning of competitive markets for telecommunications services, in contravention of the pro-competitive framework prescribed by Congress in the 1996 Act. Therefore, we propose and seek comment on additional measures to facilitate the ability of telephone consumers to make informed choices among competitive telecommunications service offerings.

3. In particular, we seek comment on the distinction between government "mandated" and other charges, and tentatively conclude that where carriers choose to list charges in separate line items on their customers' bills, government mandated charges must be placed in a section of the bill separate from all other charges. We also seek comment on whether it is unreasonable to combine federal regulatory charges into a single line item, though any commenter who still believes that carriers should be able to combine two or more of these charges into a single charge is welcome to refresh the record on how carriers should identify such line items.

4. Furthermore, we tentatively conclude that carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale, and that such disclosure must occur before the customer signs any contract for the carrier's services.

5. These proposed rules are designed to discourage misleading billing practices, and thereby aid consumers in understanding their telecommunications bills, providing them with the tools they need to make informed choices in the market for telecommunications service.

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[197] 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

B. Legal Basis

6. The legal basis for any action that may be taken pursuant to this *Second Further Notice* is contained in sections 1-4, 201, 202, 206-208, 258, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201, 202, 206-208, 258, 303(r), and 332; section 601(c) of the Telecommunications Act of 1996; and sections 1.421, 64.2400, and 64.2401 of the Commission's rules, 47 C.F.R. §§ 1.421, 64.2400, and 64.2401.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[198] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[199] In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act.[200] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[201]

8. We have included small incumbent LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a wireline telecommunications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[202] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[203] We therefore have included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

[198] *See* 5 U.S.C. § 603(b)(3).

[199] 5 U.S.C. § 601(6).

[200] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

[201] 15 U.S.C. § 632.

[202] 13 C.F.R. § 121.201, NAICS code 517110.

[203] *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 5 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

9. *Incumbent Local Exchange Carriers*. Neither the Commission nor the SBA has developed a small business size standard for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees.[204] According to the FCC's *Telephone Trends Report* data, 1,310 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services.[205] Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees.[206] Consequently, the Commission estimates that the majority of providers of local exchange service are small entities that may be affected by the rules and policies adopted herein.

10. *Competitive Local Exchange Carriers and Competitive Access Providers*. Neither the Commission nor the SBA has developed specific small business size standards for providers of competitive local exchange services or competitive access providers (CAPs). The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees.[207] According to the FCC's *Telephone Trends Report* data, 563 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.[208] Of these 563 companies, an estimated 472 have 1,500 or fewer employees, and 91 have more than 1,500 employees.[209] Consequently, the Commission estimates that the majority of providers of competitive local exchange service and CAPs are small entities that may be affected by the rules.

11. *Local Resellers*. The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that standard, such a business is small if it has 1,500 or fewer employees.[210] According to the FCC's *Telephone Trends Report* data, 127 companies reported that they were engaged in the provision of local resale services.[211] Of these 127 companies, an estimated 121 have 1,500 or fewer employees, and six have more than 1,500 employees.[212] Consequently, the Commission estimates that the majority of local resellers may be affected by the rules.

12. *Toll Resellers*. The SBA has developed a specific size standard for small businesses within

[204] 13 C.F.R. § 121.201, NAICS code 517110.

[205] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, at Table 5.3, p. 5 - 5 (May 2004) (*Telephone Trends Report*). This source uses data that are current as of October 22, 2003.

[206] *Id.*

[207] 13 C.F.R. § 121.201, NAICS code 517110.

[208] *Telephone Trends Report*, Table 5.3. The data are grouped together in the *Telephone Trends Report*.

[209] *Id.*

[210] 13 C.F.R. § 121.201, NAICS code 517310.

[211] *Telephone Trends Report*, Table 5.3.

[212] *Id.*

the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.[213] According to the FCC's *Telephone Trends Report* data, 645 companies reported that they were engaged in the provision of toll resale services.[214] Of these 645 companies, an estimated 619 have 1,500 or fewer employees, and 26 have more than 1,500 employees.[215] Consequently, the Commission estimates that a majority of toll resellers may be affected by the rules.

13. *Interexchange Carriers*. Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees.[216] According to the FCC's *Telephone Trends Report* data, 281 carriers reported that their primary telecommunications service activity was the provision of interexchange services.[217] Of these 281 carriers, an estimated 254 have 1,500 or fewer employees, and 27 have more than 1,500 employees.[218] Consequently, we estimate that a majority of interexchange carriers may be affected by the rules.

14. *Operator Service Providers*. Neither the Commission nor the SBA has developed a size standard for small entities specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees.[219] According to the FCC's *Telephone Trends Report* data, 21 companies reported that they were engaged in the provision of operator services.[220] Of these 21 companies, an estimated 20 have 1,500 or fewer employees, and one has more than 1,500 employees.[221] Consequently, the Commission estimates that a majority of operator service providers may be affected by the rules.

15. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a size standard for small entities specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees.[222] According to the FCC's *Telephone Trends Report* data, 65 carriers reported

[213] 13 C.F.R. § 121.201, NAICS code 517310.

[214] *Telephone Trends Report*, Table 5.3.

[215] *Id.*

[216] 13 C.F.R. § 121.201, NAICS code 517110.

[217] *Telephone Trends Report*, Table 5.3.

[218] *Id.*

[219] 13 C.F.R. § 121.201, NAICS code 517110.

[220] *Telephone Trends Report*, Table 5.3.

[221] *Id.*

[222] 13 C.F.R. § 121.201, NAICS code 517110.

that they were engaged in the provision of "Other Toll Services."[223] Of these 65 carriers, an estimated 62 have 1,500 or fewer employees, and three have more than 1,500 employees.[224] Consequently, the Commission estimates that a majority of "Other Toll Carriers" may be affected by the rules.

16. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"[225] and "Cellular and Other Wireless Telecommunications." [226] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[227] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[228] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[229] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[230] Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

17. As noted, we tentatively conclude that where carriers choose to list charges in separate line items on their customers' bills, government mandated charges must be placed in a section of the bill separate from all other charges; and that carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale. Furthermore, we seek comment on whether it is unreasonable to combine federal regulatory charges

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[223] *Telephone Trends Report*, Table 5.3.

[224] *Id.*

[225] 13 C.F.R. § 121.201, NAICS code 517211.

[226] 13 C.F.R. § 121.201, NAICS code 517212.

[227] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

[228] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

[229] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[230] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

into a single line item. However, we also tentatively conclude that the Commission should reverse its prior holding permitting states to enact and enforce telecommunications carrier-specific truth-in-billing rules. This tentative conclusion is designed to address the potential for inconsistent state regulation of CMRS and other interstate carrier billing practices, and thereby simplify the requirements for such carriers' compliance with potentially disparate billing regulations. Aside from simplifying procedural compliance requirements for small entities, we expect that this measure also will alleviate some compliance costs for small entities.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

18. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[231]

19. As described above, we seek comment on the distinction between government "mandated" and other charges, and tentatively conclude that where carriers choose to list charges in separate line items on their customers' bills, government mandated charges must be placed in a section of the bill separate from all other charges. We also seek comment on whether it is unreasonable to combine federal regulatory charges into a single line item, though any commenter who still believes that carriers should be able to combine two or more of these charges into a single charge is welcome to refresh the record on how carriers should identify such line items. Furthermore, we tentatively conclude that carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale, and that such disclosure must occur before the customer signs any contract for the carrier's services. For each of these issues and tentative conclusions, we seek comment on the effects our proposals would have on small entities, and whether any rules that we adopt should apply differently to small entities.

20. For instance, the *Second Further Notice* seeks comment on whether the Commission should require standardized labeling of categories of charges on consumers' bills, and what the monetary costs of such a requirement would be. We particularly seek comment on the nature of the economic impact of such a requirement on small entities, and whether the proposed requirement should be applied to them in any manner different from its application to entities that do not qualify as small entities.[232] In addition, we tentatively conclude that carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale, and that such disclosure must occur before the customer signs any contract for the carrier's services. We specifically seek comment on the effect of these tentative conclusions on small entities, and on whether it would be appropriate to apply whatever provisions we adopt to small entities in the same manner that we

[231] 5 U.S.C. § 603(c)(1)-(c)(4).

[232] *See supra* para. 46.

apply them to entities that do not qualify as small.[233]

21. We do not have any evidence before us at this time regarding whether proposals outlined in this *Second Further Notice* would, if adopted, have a significant economic impact on a substantial number of small entities. However, we recognize that mandating changes to the format of consumers' bills, and specific point of sale disclosures, likely would result in additional burdens on small CMRS providers and other interstate carriers. We therefore seek comment on the potential impact of these proposals on small entities, and whether there are any less burdensome alternatives that we should consider.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

22. In seeking comment on our tentative conclusion that government mandated charges should be placed in a section of the bill separate from all other charges, where carriers choose to list charges in separate line items on their customers' bills, we note that: 1) section 64.2400(a) of the Commission's rules provides that our truth-in-billing rules are intended "to aid customers in understanding their telecommunications bills, and to provide them with the tools they need to make informed choices in the market for telecommunications service"; and 2) section 64.2401(b) requires that descriptions of billed charges be brief, clear, non-misleading, and in plain language. We seek comment on our stated belief that separating government mandated charges from all other charges satisfies the policy goals embedded in these rules.[234] Though any rules that we may adopt to implement this tentative conclusion thus may overlap somewhat with 47 C.F.R. §§ 64.2400(a) and 64.2401(b), we believe that these new rules would complement the existing rules, rather than duplicating them or conflicting with them.

23. In tentatively concluding that bases other than the rate regulation proscription of section 332(c)(3)(A) exist for the Commission to preempt state regulation of carriers' billing practices, we tentatively conclude further that we should reverse our prior pronouncement that states may enact and enforce more specific truth-in-billing rules than ours. In large part, this pronouncement has been embodied by the substance of 47 C.F.R. § 64.2400(c). We seek comment on, if we do adopt this further tentative conclusion, whether we should limit the scope of what constitutes "consistent truth-in-billing requirements by the states" under 47 C.F.R. § 64.2400(c), eliminate section 64.2400(c) from our rules altogether, or adopt an enforcement regime where states are permitted to enforce rules developed by the Commission.[235] Thus, our tentative conclusions may conflict with 47 C.F.R. § 64.2400(c), or may overlap with that rule in a manner in which the existing rule may be harmonized with our tentative conclusions.

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[233] *See supra* para. 56.

[234] *See supra* para. 43.

[235] *See supra* para. 51.

APPENDIX D

LIST OF COMMENTERS AND REPLY COMMENTERS

Due to the significant number of comments filed by individual consumers in this proceeding, we have listed below only those comments received from industry, consumer advocacy groups and governmental entities. All individual consumer comments filed in this proceeding are available for inspection on the Commission's Electronic Comment Filing System (ECFS).

American Association of Retired Persons	AARP
AT&T Corporation	AT&T
AT&T Wireless Services, Inc.	AWS
BellSouth Corporation	BellSouth
California Public Utilities Commission	CPUC
Cingular Wireless LLC	Cingular
Coalition for a Competitive Telecommunications Market	CCTM
Consumers Union et al.	Consumers Union
CTIA – The Wireless Association	CTIA
District of Columbia, Office of the People's Counsel	OPCDC
Florida Public Service Commission	Florida PSC
Global Crossing North America, Inc.	Global Crossing
IDT America, Corp.	IDT
Indiana Office of Utility Consumer Counselor	Indiana OUCC
Indiana Utility Regulatory Commission	Indiana URC
Iowa Utilities Board	Iowa UB
Leap Wireless International, Inc.	Leap
Massachusetts Office of the Attorney General	Massachusetts OAG
MCI, Inc.	MCI
Minnesota Department of Commerce	Minnesota DOC
National Association of Regulatory Utility Commissioners	NARUC
National Association of State Utility Consumer Advocates	NASUCA
National Consumers League	Consumers League
National Telecommunications Cooperative Association	NTCA
New Jersey Division of the Ratepayer Advocate	NJ
Nextel Communications, Inc. and Nextel Partners, Inc.	Nextel
Public Utilities Commission of Ohio	Ohio PUC
Rural Cellular Association	RCA
Rural Telecommunications Group, Inc.	RTG
Rural Wireline Carriers	RWC
Satellite Receivers, Cash Depot, and David Charles	Satellite Receivers
SBC Communications, Inc.	SBC
Sprint	Sprint
Telecommunications Research and Action Center	TRAC
Teletruth	Teletruth
Tennessee Emergency Communications Board	TECB
Texas, State of (Office of the Attorney General of Texas)	Texas OAG
The Utility Reform Network and Utility Consumers Action Network	TURN & UCAN

T-Mobile USA, Inc.	T-Mobile
TracFone Wireless, Inc.	TracFone
United States Cellular Corporation	USCC
United States Communications Association	USCA
United States Telecommmunications Association	USTA
Verizon Communications Inc.	Verizon
Verizon Wireless	Verizon Wireless

SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL

RE: *Truth-in-Billing and Billing Format (CC Docket No. 98-170); National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling (CG Docket No. 04-208),* Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking.

Wireless consumers deserve accurate, meaningful billing information in a format they can understand. Today's item places the power of choice in the hands of the American consumer by eliminating the current exemption for CMRS carriers from providing customers' with brief, clear and non-misleading billing descriptions, and makes additional clarifications to our existing truth-in-billing rules to facilitate the provision of accurate consumer information.

Today's item also opens the door for public comment on additional measures to facilitate the ability of consumers to make informed choices among competitive telecommunications service offerings. Moreover, our proposal that carriers must disclose the full rate at the point of sale would ensure that consumers are given information at a critical time that they can use it in evaluating their competitive choices, and is especially important where early contract termination fees apply.

Nonetheless, as Congress recognized, wireless service is inherently an interstate service. As a result, it is simply not sustainable to have a multitude of divergent, and at times intrusive, state-by-state billing regulations. Targeted federal regulation that applies to *all* carriers protects consumers and allows those carriers with national rate plans, such as IXCs and CMRS providers, to operate. However, no action that we take in this *Order* and the *Declaratory Ruling* below limits states' authority to enforce their own generally applicable consumer protection laws, to the extent such laws do not require or prohibit use of line items. Indeed, like our approach to voice over Internet protocol, we envision an active state partnership in enforcing whatever further rules and guidelines are adopted in this proceeding.

STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Truth-in-Billing and Billing Format, CC Docket No. 98-170; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing, CG Docket No. 04-208, Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking.

Today's decision reflects the Commission's important and ongoing role in ensuring that consumers are provided with clear and non-misleading information in their telephone bills. I have frequently argued that the robustly competitive nature of the wireless industry obviates the need for many forms of regulation. So I approach the prospect of imposing new truth-in-billing requirements with some skepticism. I support this item, however, because it strikes an appropriate balance by avoiding burdensome regulation, while recognizing the strong governmental interest in ensuring that consumers fully understand their options. Indeed, consumers can only benefit from the varied and innovative services a competitive market offers if they can make informed choices. While this Order increases carriers' regulatory oversight somewhat at the federal level, it will produce a more streamlined regime overall by preempting state regulations that impede the delivery of pro-competitive benefits to consumers.

Consistent with the practices of most CMRS carriers, this order mandates that billing practices, including line items, be truthful and non-misleading. The phenomenal growth in consumer use of wireless phones reflects the success of the market in delivering a valuable product. At the same time, however, over the past few years, we have seen an increase in the number of complaints received with respect to wireless carriers. By removing any ambiguity regarding CMRS providers' responsibility to provide clear and non-misleading billing information to their customers, we are strengthening the ability of consumers to shop around and compare prices.

With regard to the preemption aspect of today's decision, it is important to remember that the amazing success of the wireless industry is due in large part to the foresight of Congress in establishing a comprehensive and consistent national regulatory framework for wireless providers. Congress mandated a uniform national regulatory policy for CMRS, not a policy balkanized by individual state decisions. Under this structure, not only is the FCC given the exclusive authority to regulate rates and entry of wireless carriers, but it also is vested with the flexibility, through the exercise of its forbearance authority, to promote competitive market conditions. This framework for CMRS has provided significant benefits to consumers by creating effective competition among wireless providers and spurring innovations such as regional and national calling plans. The Commission must continue to ensure that state regulations do not undermine congressional intent by imposing unnecessary regulatory burdens that would dampen the benefits of wireless competition to consumers.

Even given this clear congressional mandate, I do not approach preemption of state regulatory authority lightly. In this case, we appropriately conclude that the state regulations in question amount to impermissible rate regulation. We also narrowly define our preemption to address only those state regulations that either *require or prohibit* the use of line items. The item makes clear that nothing in our action today limits states' ability to assess taxes or create, for example, a state-specific universal service fund to which carriers must contribute.

The NASUCA petition, which brought these issues before us, proposes sweeping and overbroad regulation that not only would frustrate Congress's and the Commission's important federal goals with respect to the wireless industry, but also would threaten to harm consumer welfare. This would be a step backwards and would frustrate carriers' ability to communicate clearly with their customers. If we did not preempt the type of regulations at issue, we could seriously hinder the wireless industry's ability to offer consumers flexible and innovative regional or national rate plans. Government should not impede the relationship between consumers and their providers.

I also want to make clear that nothing in this item diminishes the recognition that state governments play a critical role in protecting consumers, particularly through enforcement of generally applicable provisions that bar fraud and deceptive practices. Indeed, we specifically seek comment on additional truth-in-billing requirements and the proper role of states and the Commission in carrier billing practices. I look forward to creating a full record on these important issues and to working with my state colleagues to ensure American consumers have access to the information they need.

SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
APPROVING IN PART, DISSENTING IN PART

Re: *Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing*, Order, Declaratory Ruling and Second Further Notice of Proposed Rulemaking (CC Docket No. 98-170, CG Docket No. 04-208)

My starting point here is that competitive communications markets function best when consumers have access to accurate and meaningful information. When end users have the facts—and have access to those facts in an understandable format—they can make informed choices. Too often, we know, that's not the case. Most phone bills make my point. It's baffling how complicated they are. The explosion of new services and the line items and fees accompanying them have made it more difficult than ever for consumers to compare rates and shop around. You need an accountant or a lawyer—preferably both—to root out what you're being charged for and why.

This is what led NASUCA last year to file a Petition for Declaratory Ruling. NASUCA asked the Commission to prohibit carriers from imposing line items unless the charges are mandated by government action. This is perhaps not the cure for all of our billing ills. It could actually have the unintended effect of inhibiting national wireless one-rate plans. Nevertheless, this petition was the ideal vehicle for the Commission to initiate a fresh dialogue on how to make bills more honest, readable and easy to understand.

I don't believe we are taking advantage of this opportunity. We take one step forward by applying basic truth-in-billing to wireless services. That's good. Then, amazingly, given the language we hear today on how pro-consumer this Order is, the majority proceeds to put the kibosh on state consumer protection efforts. Now I support the decision to require that wireless carrier billing descriptions be brief, clear and non-misleading. But I must dissent to the majority's decision to preempt state efforts to curb line item abuses or to require that such charges be explained.

The majority says preemption is compelled by the law. This is an incredibly cramped interpretation that ignores the plain meaning of the statute. Congress specifically prohibited states from regulating wireless "rates" but reserved for states the ability to regulate "other terms and conditions." State efforts to curtail or require line item explanations are ***not*** exercises in ratemaking. The legislative history bears me out. It describes the "other terms and conditions" reserved for the states as "such matters as customer billing information and practices." The majority blows breezily by the will of Congress in pursuit of its fixation—or at least its present curious flirtation—with federal preemption.

The majority says that preemption does not preclude state laws of general applicability. Commenters here tell us that state laws as diverse as the Texas Deceptive Trade Practices Act and the Vermont Universal Service Fund Collection Statute may be preempted. Tennessee may find that its billing mechanism to support enhanced 911 services is suddenly suspect. The record suggests that the fate of Washington State's 911 funding system may be similarly uncertain. Indiana's effort to curb line item abuses through that state's Utility Receipts Act may be cut short, and Maine's initiative to make wireless service pricing more transparent is now in question. Many other states may lose authority over consumer billing complaints. It will take some time for states to survey the debris from this erosion of cooperative federalism. And there may be further wreckage on the horizon, because in the Notice of

Proposed Rulemaking accompanying today's Order, the majority tentatively concludes that it should preempt ***all*** state laws involving billing clarity that are more extensive than our minimal federal requirements. As I understand it, this could even apply to wireline as well as to wireless bills.

The majority says that with the states preempted, the Commission will not hesitate to enforce its truth-in-billing requirements. But to date all the Commission has done is hesitate. In the six years since adoption of our truth-in-billing requirements, I cannot find a single Notice of Apparent Liability concerning the kind of misleading billing we are talking about today—the only ones I find involve slamming. Yet in the last year alone, the Commission received over 29,000 non-slamming consumer complaints about phone bills.

So we are very likely doing more harm than good here. Lots of people agree with me. Nearly 14,000 consumers have written the Commission urging us not to take this kind of action. Their concerns are echoed in the comments of the AARP, Consumers Union, the National Consumer Law Center, the Massachusetts Union of Public Housing Tenants, the National Consumers League, the Governor of Maine, the Maine Department of Attorney General, the Massachusetts Office of the Attorney General, the Utility Reform Network, the Utility Consumers Action Network, the Vermont Public Service Board, the Minnesota Department of Commerce, the Office of the People's Counsel for the District of Columbia, the Indiana Utility Regulatory Commission, the Office of the Attorney General of Texas, the Tennessee Emergency Communications Board, the Iowa Utilities Board, the New Jersey Division of the Ratepayer Advocate, the National Association of State Utility Commissioners and others. Yet we forge ahead, bypassing the opportunity NASUCA gave us to rein in incomprehensible bills. I'm afraid consumers will remember that when they called this Commission for help understanding their phone bills, we hung up.

STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
APPROVING IN PART, DISSENTING IN PART

Re: Truth-In-Billing Format, National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-In-Billing, Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-170, CG Docket No. 04-208.

In March of last year, a national coalition of consumer advocates, the National Association of State Utility Consumer Advocates (NASUCA), petitioned the Commission, asking the Commission to strengthen its "Truth-in-Billing" rules, which apply to the "line item" charges that are listed separately on consumer telephone bills. NASUCA asked the Commission to address the proliferation of line item charges and to ensure that consumers get accurate information about the total cost of the telecommunications services. In this Order, the Commission largely rejects NASUCA's petition, missing a golden opportunity to provide clarity for consumers. I dissent in part from this item because I am concerned that the Commission turns the consumer advocates' petition on its head and strips away existing consumer protections without putting in place adequate alternative measures.

While the Commission has previously acknowledged the benefits of certain clear and non-misleading line items on consumer bills, many consumer advocates suggest, and the Commission's data seems to confirm, growing levels of consumer complaints about billing for the telecommunications services. Consumer groups, like AARP, have argued that a proliferation of line item charges makes it difficult for consumers to determine the actual price for their telecommunications service and that this price confusion is a costly issue for consumers. These concerns are at the heart of NASUCA's petition.

Unfortunately, from the consumer's perspective, the most tangible result of this Order will likely be less oversight of consumers' bills, not more. By preempting States, our historic partners in consumer protection, this Order curtails States' ability to moderate line items on consumers' wireless phone bills. The merits and timing of this preemption are questionable, and I cannot support this portion of the Order. The result for consumers, who routinely turn to state public utility commissions for help with billing issues, is very likely less oversight and more confusion, which is hardly the result sought by consumer advocates.

By removing the States' role here, the FCC has set itself up as the sole arbiter of line item charges. This result is not compelled by the Act, which removes States' ability to set rates for wireless service, but preserves States' ability to address "other terms and conditions," which include billing issues. State commissions offered evidence in this record that they are confronted regularly with a myriad of new line item surcharges and new names for existing line items. Similarly, the Commission's existing Truth-in-Billing rules preserved States' ability to adopt consistent requirements, until now. Yet, the Commission reverses course here without even putting this proposal out for comment.

The one measured step in this Order for consumers is the decision to explicitly apply the Commission's Truth-in-Billing rules to wireless carriers. I support this effort to clarify that wireless service bills must be clearly organized and must provide full and non-misleading descriptions of charges. But clarifying that these rules apply to wireless bills alone is unlikely to be a panacea for consumers. The FCC's current Truth-in-Billing rules have not been the basis for a single Notice of Apparent Liability in the six plus years that they have been in effect.

I am sympathetic to carriers' desire to advertise national rate plans and believe that goal is not irreconcilable with the desire to make consumer bills accurate and clear. Carriers have raised legitimate questions about which government-related charges should be separated out through line items and about the practical difficulties they face in fashioning national rate plans. Yet, this Order does not address which line items should be permitted and whether there are any practical limits to the amount of charges that can be added on above the advertised price. The item leaves for a Further Notice most of the hard questions for carriers and consumers: what costs should carriers be able to separate out through line items? When are line items helpful for consumers, and when do they simply add "noise" that distracts consumers from the ultimate cost of service? Since we are leaving these issues unanswered, it strikes me as premature at best to take away resources available to consumers by preempting State laws and regulations that might moderate the proliferation of line item charges.

I am also troubled by the majorities' tentative conclusions in the attached Further Notice to impose far greater preemption of State oversight of consumer protection and carrier billing practices for both wireless and traditional landline telephone service. The consumer advocates' petition calls for additional clarification about our rules, not a reduction in the resources available to consumers. Particularly when it comes to consumer protection, this Commission should be looking for partners in our efforts, not looking for ways to eliminate them. For these reasons, I approve in part and dissent in part.